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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/312,485	05/17/1999	PATRICE DEBREGEAS	065691/0163	2681
7590 02/09/2006 FOLEY AND LARDNER WASHINGTON HARBOUR 3000 K STREET NW STE 500 P O BOX 25696 WASHINGTON, DC 200078696			EXAMINER SHARAREH, SHAHNAM J	
			ART UNIT 1617	PAPER NUMBER
DATE MAILED: 02/09/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/312,485

Applicant(s)

DEBREGEAS ET AL.

Examiner

Shahnam Sharareh

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14, 16-20 and 23-25 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 14, 16-20, 23-25 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Amendment filed on October 7, 2005 has been entered. Claims 14, 16-20, 23-25 are pending.

#### ***Claim Objections***

Claim 14 is objected to as being dependent upon a canceled base claim.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23, 14, 16-20, 24-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 at step ( c) recites the limitation "the process" in line 1. There is insufficient antecedent basis for this limitation in the claim. It is not clear to which process is applicant referring; the entire process or the coating process?

The term "soft" in claim 23 is a relative term which renders the claim indefinite. The term "soft" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 14, 16-20, 23-25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kamada US Patent 5,384,130 in view of Menzi US Patent 6,056,949 and Makino US Patent 5,026,560 for the reasons of record.

Applicant's arguments filed October 7, 2005 have been fully considered but they are not persuasive.

Applicant first argues that none of the references teach or suggest a method that uses organic solvent at a concentration of 5-25% (wt). (see arguments at page 4).

In response Examiner states that such line of arguments are not commensurate with the scope of the claims, because the claims are not strictly limited to the use of organic solvent. In fact the step (b) of claim 23 states that the powder coating occurs when the plant substance is in the form of a dry extract OR by coating in the solution. So claims never require the use of a solvent as the process can take place with a dry extract.

Kamada at least teaches the process of coating his spherical seed cores in the form of a dry powder or even a liquid extract or solution (see col 4, lines 58-68; col 5, lines 1-66). Thus, the prior art meets the argued limitations of the instant claims.

Applicant then adds that during the process of the invention, 5-25% by wt of organic solvent such as ethanol is used. (see arguments at page 4) and that Kamada does not advocate the use of Non-pareil-101 or Nonpareil 103. (see arguments at page 7). In response, Examiner replies that Kamada neither teaches away from using any organic solvent in his aqueous coating solution nor discourages the use of any core that starch, sugar or cellulose.

As the initial matter, the refereed portions of Kamada, col 5, lines 42-57, never states that the coating must be a solvent-free aqueous suspensions. Indeed many aqueous suspensions can contain organic solvents such as ethanol or ethylene glycol.

Moreover, applicant's claims do not require an organic solvent system, because the coating can occur with a dry extract. (see claim 23, step b). Finally, the recitation of prior art at col 2, lines 3-11 are not viewed as a teaching away, rather an alternative mode of using a solvent system to coat a neutral core.

Further, the instant claim 23 clearly employs the use of sugar, starch, cellulose or mixtures thereof at any concentration. Thus, Applicant's arguments directed to the use of microcrystalline cellulose by Kamada are not commensurate with the scope of the claims. In response to applicant's argument that Komada dealt with a different problem to be solved relating to the use of aqueous solution when preparing seed core composed of sucrose, Examiner states that the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Here, the incorporation of organic solvent such as ethanol in aqueous coating solutions is well described in the art as shown by Menzi at col 2, lines 6-59. Moreover, Kamada patent, itself, acknowledges such use of organic solvents. (see col 2, lines 3-11). Therefore, the fact that applicant has recognized another advantage from the suggestions of the prior art can not be the basis of patentability for obvious differences.

Thus, applicant's arguments are not found persuasive because, it would have been obvious to one of ordinary skill in the art at the time of invention to replace the coating solutions of Kamada with the coating solutions of Menzi and prepare stable plant substance containing granules, and then optimize the starch/sucrose ratios in the neutral core following the teachings of both Kamada and Makino to improve aesthetic properties of such granules.

***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh whose telephone number is 571-272-0630. The examiner can normally be reached on 8:30 am - 6:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, PhD can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SAN-MING HUI  
PRIMARY EXAMINER